

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 05-MSRC-004

COMMONWEALTH OF KENTUCKY
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

V.

SIMON RATLIFF

RESPONDENT

FINAL ORDER

PROCEDURAL HISTORY

On February 24, 2005, the Kentucky Office of Mine Safety & Licensing (“OMSL”) filed a Complaint, 05-MSRC-004, with the Kentucky Mine Safety Review Commission (MSRC), containing several allegations against Simon Ratliff (Ratliff). The Complaint alleged that Ratliff required coal miners to work in unsafe conditions; discharged miners for making safety complaints; discharged miners on a second occasion for having filed safety discrimination complaints with MSHA; falsifying a pre-shift examination record; attempting to impede a federal investigation by threatening miners with the loss of their underground miner’s card; and violating the terms of his probation in Administrative Action No. 03-MSRC-008.

The Complaint also alleged Ratliff was the mine superintendent of the mine where the alleged acts took place.

The Complaint further set forth the jurisdiction for the action KRS 351.025 (1) which provided for the imposition and enforcement of sanctions against certified miners whose intentional violation of, or order to violate mine safety laws places miners in imminent danger of serious injury or death. Also KRS 352.390 which provided the MSRC shall revoke, suspend, or probate certificates if it is established in the judgment of the Commission that the holder has become unworthy to hold the certificate by reason of violation of law or failure to comply with the mining laws of the Commonwealth of Kentucky.

The Complaint further alleged numerous violations of the Federal Mine Safety Laws. It alleged that Ratliff falsified a pre-shift examination book in violation of KRS 352.280 and KRS 352.290. The Complaint also stated Ratliff violated KRS 351.193 when he required miners to operate equipment or work in any condition which he reasonably believed to be unsafe. Also, Ratliff violated KRS 351.193 when he took disciplinary action against a miner, unless miner is found by the Commission to have acted in bad faith and without good cause in making an allegation as to unsafe equipment or working conditions.

Ratliff's underground mine foreman's certificate was placed on probation for a period of two (2) years , effective July 21, 2003, by a previous order of the MSRC (Administrative Action No. 03-MSRC-008).

A probable cause hearing was held on April 14, 2005 and the

Commissioners reviewed the Complaint and found probable cause to believe Ratliff had committed violations of the Kentucky Mine Safety Laws regarding unsafe work practices. Subsequently an Order finding probable cause was entered and a Notice of Administrative Hearing was filed.

On April 26, 2005, Ratliff filed three letters in the record in which he disputed all the allegations that were made against him. He went into detail about the allegations mentioned in the Complaint. Although not in proper form, they were placed in the record.

On March 7, 2005, Coy McClain and Wendell McClain, through their attorney, the Honorable Wes Addington, moved to intervene in the action. Then on May 23, 2005, Gary Conway, also, through his attorney, the Honorable Wes Addington, moved the Board to intervene. Recognizing however, that the parties had an interest and might be able to provide relevant evidence as to a possible penalty, the Commission allowed them to proceed as an amicus curiae. The order limited their participation to issues of penalty or sanctions, and permitted them to submit an amicus brief relative to the aforesaid issues to be considered before the Commission files its Final Order.

An administrative hearing was held in this matter on March 9, 2006. The Honorable C. Michael Haines represented the Complainant, Kentucky Office of Mine Safety and Licensing. Simon Ratliff announced he would proceed *pro se*. The Honorable Wes Addington represented the intervening parties Amicus Curiae.

At the beginning of the hearing, the Complainant moved the Board to introduce as OMSL Exhibit 1 the decision of the Administrative Law Judge in the Federal Mine Safety and Health Review Commission case of *MSHA v. Misty Mountain Mining, Inc., Simon Ratliff et al.* The Complainant further moved the Board to introduce as OMSL Exhibit 2 the Final Order Regarding Simon Ratliff in 03-MSRC-008 entered by the MSRC dated August 21, 2003, which Order had placed Ratliff on probation for two (2) years due to a previous violation of Kentucky mine safety laws. No objection to either document was raised and both were received in the record.

The Complainant the moved for Summary Judgment based on the decision in the Federal Case. The argument was that the issues in the present case had decided the underling facts in the present case wherein the ALJ found that Mr. Ratliff allowed the men to operate equipment that was unsafe. No argument in opposition to the motion was raised. However, the motion was overruled on the grounds that the Federal decision had a different standard than did the Commission, and thus, was not decisive of the present issues.

The Complainant entered two (2) exhibits, as described above, and called two (2) witnesses, Gary Conway and Wade Damron, to testify. At the conclusion of the Complainant's case, it moved the Commission for a directed verdict, which was overruled by the Commission. The Respondent entered one (1) exhibit, MSHA Citation Continuation forms and served as his only witness. The parties have filed post-hearing briefs as agreed to during the hearing. After

considering the evidence presented at the administrative hearing, the Commission submits the following Findings of Fact, Conclusions of Law, and Final Order.

FINDINGS OF FACT

Based upon the evidence admitted and the record taken as a whole, the Commission finds the following facts are established by a preponderance of the evidence.

1. That at all times complained of herein through October 14, 2004, Simon Ratliff was Superintendent of the Misty Mountain Mining, Inc., located in Jenkins, Letcher County, Kentucky.

2. That in early August of 2004, Gary Conway (Conway) became an employee of Misty Mountain Mining, Inc. under the supervision of Ratliff.

3. That Conway, in early August 2004, was operating a shuttle car when he complained to Ratliff that the car had no brakes, to which Ratliff changed Conway's job and had him operate the roof bolter. Ratliff further advised him that he would stay back and fix the car later.

4. That while operating the roof bolter, Conway complained to Ratliff the dust box was defective, he could not breathe or see, to which Ratliff had another man put weather stripping around the doors of the box, which Conway said did not help.

5. Conway opined that Ratliff said they had plenty of filters for the dust collector box, but that he was saving them for times when inspectors were

in the area.

6. Conway testified that the ATRS (automatic temporary roof support) on the roof bolter would not reach the roof (top) in one area of the mine for safe bolting and he asked Ratliff for crib block, to which he alleges that Ratliff said keep on bolting.

7. Conway stated that a dispute arose between the parties as to what had been bolted, and Conway testified he would not bolt the roof where there was a gap between the roof (top) and the ATRS and was reprimanded for his actions by Ratliff.

8. Conway was working on the belt on August 30, 2004, when he was instructed by Ratliff to go get the scoop, and Conway alleged the only way to stop the scoop was to bow the bucket to stop and in so doing he cut the cable to the power box.

9. Ratliff, learning of this, told Conway to “get his bucket and go home”, which lead Conway to believe that he was fired.

10. Conway then filed a discrimination suit with the Federal Mine Safety and Health Administration and was later reinstated to his job at Ratliff’s mine.

11. Conway was given very little work when he returned, and on October 14, 2004, Ratliff advised him that he did not have to work under those conditions and that he quit, and in the same conversation Conway was told to get his bucket and go home.

12. Wade Damron testified for OMSL that he started working at Ratliff's mine in mid-August 2004, and that his first job was as a roof bolter, a job he held for about three (3) weeks.

13. Damron complained to his foreman and he thought he complained to Ratliff that the dust box on the roof bolter was defective and unsafe, and that because of this and the inability of the roof bolter to tram, he felt the machine was unsafe.

14. Damron stated that he was told by Ratliff that the job had to be done, but was never told by him directly to run unsafe equipment.

15. Damron testified that he was removed from the roof bolter and told to run the scoop which was outside and that the brakes had been repaired. Damron thought the scoop was safe. However, in driving back into the mine, he discovered the brakes were not fixed and that he had to run the scoop into the rib to stop the scoop.

16. Damron further testified that he was told by Ratliff to get his bucket and go home, to which he went to MSHA and filed a discrimination complaint and was eventually reinstated at the mine.

17. Damron also said that Ratliff would have safety talks with the men about once a week.

18. Ratliff attempted to introduce a polygraph test result showing that he was telling the truth, to which the Complainant objected, and said objection was sustained by the Commission.

19. Ratliff then testified that he was a certified mine foreman, an electrician, and an EMT, that he was presently employed as an electrician at the Clean Energy Mine in Knott County, and was not in a supervisory position.

20. Ratliff said that on the day of the runaway scoop being driven by Damron, he had been working outside on the belt when he was advised that the pinner was stuck in an area that he had told the men not to take the pinner. He went down in the mine and while talking to the operators, Damron came down the hill and ran the scoop into the rib to stop it.

21. Ratliff then had the electrician come to the scoop and check the brakes, and neither he nor the electrician could find anything wrong with the brakes. They took the scoop out of the mine and again worked on the brakes.

22. After they worked on the brakes, he had Conway operate the scoop and no complaints were made by Conway as to the brakes. However, he later reprimanded Conway for running over the cable with the scoop.

23. He further testified that he received two (2) citations from the state, one for the dust collector on the ATRS and the other for roof bolts being set in the area where the ATRS would not reach the roof.

24. It was not shown who put the roof bolts in the area where the ARTS would not reach the roof, and Conway said he did not put the roof bolts in the area.

25. The Commission found the statement made in the Federal Mine Safety and Health Review Commission decision concerning the "Credibility of

Witness”, page 16, to be true in this case as well.

“On the whole, I found the main protagonists in the episode, Simon Ratliff, the McClains, Conway and Damron to be of doubtful credibility.”

26. No evidence was presented showing that Ratliff falsified a pre-shift examination book in violation of KRS 352.280 and KRS 352.290.

27. No evidence was presented showing that Ratliff had attempted to impede a federal investigation by threatening miners with the loss of their underground miner’s cards.

28. No clear evidence was presented showing that disciplinary action was taken by Ratliff against Conway and Damron on the grounds that they acted in bad faith and without good cause in making an allegation as to unsafe equipment or working conditions.

29. That Ratliff’s electrical certificate had been suspended until he completed four (4) hours of electrical training and his mine foreman’s certificate was placed on probation for two (2) years effective July 21, 2003, by the Commission in the case of Administrative Action No. 03-MSRC-008.

30. That the dust collector on the ATRS was defective which created an unsafe condition for the miners, and the evidence showed that Ratliff was aware of the condition of the dust collector.

CONCLUSIONS OF LAW

Kentucky does not have a statute dealing with the termination of a mine employee who files a complaint with the government over unsafe equipment.

KRS 351.193 provides as follows:

No miner shall be required to operate any equipment or work in any condition which he reasonably believes to be unsafe. If the miner invokes his or her safety rights under this section, the miner shall have the right to be relieved from the assignment in dispute. The employee may be assigned to correct the condition or may be assigned to other duties until such time as the condition is resolved or corrected. No other miner shall be assigned to perform this job until the condition is corrected. The miner or his authorized representative and the company shall review the condition immediately and attempt to resolve the dispute. Should the miner not have an authorized representative, he may represent himself in the dispute. If the dispute is not settled by the company and the miner or his or her authorized representative, either party reserves the right to call in the commissioner or his authorized representative immediately and the dispute shall be settled on the basis of the inspector's finding with a written copy of his finding given to the company and the miner and his authorized representative. In the event no representative of the miner exists, the employee shall have the right to have the dispute resolved based on the inspector's findings. No disciplinary action shall be taken against a miner by a licensee unless the miner is found by the commissioner or his authorized representative to have acted in bad faith and without good cause in making an allegation as to unsafe equipment or working conditions.

KRS 352.390 states:

The Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the Board that the holder has become unworthy to hold the certificate by reason of violation of law...failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause.

KRS 352.340 provides in part:

The mine foreman...shall give prompt attention to the removal of all dangers reported to him... he shall notify every person whose safety is menaced thereby to remain away from ... the dangerous condition....

KRS 352.350(3) provides:

The mine superintendent, mine foreman and assistant mine foreman shall be held jointly responsible for the immediate compliance with the provisions of KRS Chapter 351 and this chapter.

The Mine Safety Review Commission has established criteria for the imposition of penalties for subsequent violations in 825 KAR 1:030 which provides in part:

Section 1 Definitions. (3) "Subsequent offense" means any intentional violation of, or order to violate a mine safety law which places a miner in imminent danger of serious injury or death, as adjudicated by the Kentucky Mine Safety Review Commission, and which occurs after the individual's or entity's first offense.

Section 4 Modification of civil penalties and fines. The maximum penalty for offenses established by 805 KAR 8:030, 805 KAR 8:040, 805 KAR 8:050, and 805 KAR 8:060 may be modified on a case by case basis using the following criteria:

- (1) Cooperation with investigators;
- (2) The severity of the harm done,...
- (3) Acceptance of responsibility for actions;
- (4) History of violations;
- (5) Adjudicated violations in other states;

- (6) Mitigating circumstances; and
- (7) Aggravating circumstances.

Based upon all of the findings of fact set forth above, the members of Mine Safety Review Commission submit the following Conclusions of Law:

(1) Jurisdiction of the Mine Safety Review Commission in this matter is pursuant to KRS 351.1041 et seq. to conduct hearings and issue orders regarding a licensee involved in the mining of coal in accordance with KRS 351.194.

(2) Respondent Simon Ratliff is duly licensed by the OMSL, and as such is required to comply with mine safety laws.

(3) The burden of proof in this action is upon OMSL.

(4) That Simon Ratliff failed to comply with the mining laws of the Commonwealth of Kentucky when, as superintendent of the mine, allowed a dangerous condition to exist on the ATRS roof bolter because it had a defective dust collector.

(5) That even though Simon Ratliff instructed others to fix the dust collector, it was his duty as superintendent to not allow miners to operate the machine until the problem was in fact fixed.

FINAL ORDER

The General Assembly has declared in KRS 351.101 that the highest

priority is the safety of the coal industry's most valuable resource, the miner. Coal production is important to this state and a high priority must be given to increasing productivity and competitiveness. Mine safety can be improved by enforcement of sanctions against certified personnel whose actions violate mine safety laws and place miners in imminent danger of serious injury or death. KRS 351.241, Section 6, notes that "The American zeal for work and productivity very frequently causes the miner to give second priority to normal safety measures and precautions."

In the case now before the Commission, it is realized by the Commission that a superintendent of a mine has primary responsibility for the operation of the mine and the safety of the men working there. While it is difficult to see that everything is working in a safe manner but it has to be done. The malfunctioning dust collector on the roof bolter was defective and Ratliff was aware of the situation. The State even cited him for the inability of the dust collector to work properly.

Ratliff had assigned a man to put weather stripping on the dust collector but did not follow through to see that the problem was fixed. The dust collector ensures that the men can see what they are doing and also are not breathing the coal dust. Coal dust, as we all know, can be highly explosive, and to allow the same to build up creates a danger of serious injury to the men.

Ratliff violated his responsibilities as superintendent of the mine by not ensuring that the roof bolter's dust collector worked properly.

The Commission considered all the factors set forth in 825 KAR 1:030, and the fact that Ratliff was on probation by virtue of a previous activity in deciding the action to take in this matter.

THEREFORE, IT IS HEREBY ORDERED, Simon Ratliff's underground miner's certification, shall be placed on **probation** for a period of one (1) year. Simon Ratliff's underground mine foreman certificate A-164-00 shall be **revoked** for a period of two (2) years from the signing of this Final Order.

If Mr. Ratliff still wants to become a certified mine foreman in the Commonwealth of Kentucky after the expiration of said revocation period, he shall retake and pass the Kentucky Mine Foreman's examination prior to reapplying to the Office of Mine Safety and Licensing.

THIS IS A **FINAL AND APPEALABLE ORDER**. Pursuant to KRS 351.194(8), an appeal of this Final Order shall be filed in the Franklin Circuit Court within thirty (30) days of the entry of this order.

SO ORDERED, this the 8TH day of June, 2006.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was mailed, by certified mail and by regular mail, postage pre-paid to the following this 9TH day of June 2005:

SIMON RATLIFF
P.O. BOX 343
LOOKOUT KY 41542
Respondent

7006 000 0005 2636 7078

And by regular mail to:

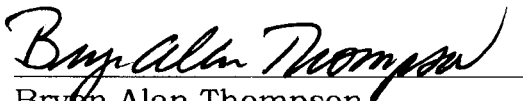
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Bryon Alan Thompson
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